

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**BOARDS OF TRUSTEES OF OHIO
LABORERS' FRINGE BENEFIT
PROGRAMS,**

Plaintiff,

v.

**Case No. 2:18-cv-316
Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Chelsey M. Vascura**

**J CHILDERS TRUCKING &
CONSTRUCTION, LLC,**

Defendant.

REPORT AND RECOMMENDATIONS

On July 19, 2018, this Court issued a Show Cause Order (ECF No. 10) requiring Defendant, through its authorized officer, to appear before this Court to show cause for why it should not be held in contempt for failing to comply with the Court's May 25, 2018 Order (ECF No. 7), which required Defendant to appear for deposition and respond to Plaintiff's written discovery. Plaintiff's counsel appeared at the August 23, 2018 show cause hearing, but Defendant did not.

Federal Rule of Civil Procedure 37(b)(2) sets forth a laundry list of sanctions for failure to comply with a discovery order, including "treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination." Fed. R. Civ. P. 37(b)(2)(A)(vii).

Based upon Plaintiff's Motion for Contempt (ECF No. 9) and the attached exhibits (ECF Nos. 9-1 and 9-2), the undersigned finds that Defendant has violated the Court's May 25, 2018 Order (ECF No. 7) by failing to permit an audit of its records. It is therefore

RECOMMENDED that Defendant be held in contempt and that a fine of **\$100.00 PER DAY** be imposed on Defendant until it complies with the Court's Order to produce responses to Plaintiff's written discovery. It is further **RECOMMENDED** that Defendant be ordered to pay the attorney's fees and costs Plaintiff reasonably incurred in connection with its Motion for Contempt and the show cause hearing. It is **RECOMMENDED** that these sanctions *not* be imposed, however, should Defendant comply with the Court's May 25, 2018 Order (ECF No. 7) concerning an audit within the time allowed for objections to this Report and Recommendation (fourteen days). Plaintiff is **ORDERED** to file a notice informing the Court of any such compliance.

The United States Marshal is **DIRECTED** to serve this Report and Recommendation, the Court's May 25, 2018 Order (ECF No. 7), and the Court's July 19, 2018 Show Cause Order (ECF No. 10) on Defendant by personal service at its last known address and file a return of service. In addition, the Clerk is **DIRECTED** to send a copy of this Report and Recommendation via regular and certified mail to J. Childers Trucking & Construction, LLC and Jesse Childers, 4630 Lindford Ave., Canton, Ohio 44705.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made

herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE